

ORIGINAL

STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION
DOCKET NO. 2002-408-C

SC PUBLIC
UTILITY
COMMISSION

2003 SEP -5 AM 11:28

RFP

IN THE MATTER OF:)
)
Generic Proceeding to Define the Term)
"Inflation-Based Index")
_____)

SPRINT'S RETURN TO THE
PETITION FOR RECONSIDERATION
AND/OR CLARIFICATION
OF ORDER NO. 2003-466

The Consumer Advocate for the State of South Carolina has petitioned the South Carolina Public Service Commission ("Commission") for reconsideration and/or clarification of Order No. 2003-466 in the above-captioned docket. United Telephone Company of the Carolinas ("Sprint") respectfully submits that the petition of the Consumer Advocate is no more than a request for an advisory opinion with respect to matters outside the record in this docket and should therefore be denied.

The Commission, in its Order No. 2003-466 dated August 7, 2003, granted Sprint's Petition for Declaratory Order and Motion to Withdraw as a Party to the "inflation-based index" docket. In his petition for reconsideration, the Consumer Advocate correctly characterized this Commission's Order in stating: "[i]n Order No. 2003-466, the Commission accepted Sprint's interpretation of the 'inflation-based index' provision of S.C. Code Ann. Section 58-9-576(B)(4) finding that it would not apply to Sprint because on the date of its election of price regulation, Sprint was a small LEC with rates below the statewide average." C.A. Petition, para.4. The Commission recognized in its Order No. 2003-466, however, that Sprint was nonetheless subject to regulation pursuant to the Commission's holding in Order No. 1999-140 that Sprint's tariff

filings and other actions taken under its price regulation plan were subject to Commission review under its complaint process in compliance with the public interest standard. Order No. 2003-466 at page 4; see also Order No. 1999-140 at page 8. In his analysis, the Consumer Advocate accurately concedes that “[t]he Commission is correct in its finding that this ‘public interest standard’ will serve to protect Sprint’s rate payers.” C.A. Petition, para. 4.

The petition of the Consumer Advocate, however, asks this Commission to apply the principles of Order No. 2003-466 in this docket to other local exchange companies operating under Section 576 alternative regulation plans. C.A. Petition, para. 4. The Commission need not address the Consumer Advocate’s request. It is clear that the Commission’s Order granting Sprint’s Petition for Declaratory Order and Motion to Withdraw is applicable only to Sprint and its price regulation plan. Moreover, the applicability of this Order to some other plan of some other local exchange carrier is not before this Commission. Accordingly, the Consumer Advocate’s Petition for Reconsideration and/or Clarification of Order No. 2003-476 is merely a request for an advisory opinion and should be denied.

The Consumer Advocate further requests that in the event the Commission Order No. 2003-466 is limited to the “unique” facts and circumstances of Sprint’s price regulation plan, the Commission should nonetheless reconsider this order because it would create a harmful precedent for the future. The result, the Consumer Advocate argues, would be that “if other small LECs whose basic rates are below the statewide average, elect Section 576 regulation and do not voluntarily accept a public interest standard, their basic rates would not be subject to any regulation at all and could be raised by any amount at any time.” C.A. Petition, para.5.

While the Consumer Advocate correctly describes Sprint’s plan as “unique,” it serves no useful judicial purpose to speculate as to what impact Sprint’s unique alternative regulation plan

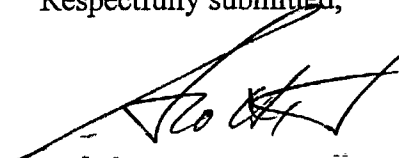
might have on some other telephone company in the future. The issue is simply not before this Commission. In addition, this issue was not before the Commission when the Commission considered Sprint's Petition for Declaratory Order, and as a result, the Commission's holding in Order No. 2003-466 is limited only to Sprint and does not apply to any other telecommunications carrier providing service in South Carolina.

It is important to note that the Commission issued its Order on August 7, 2003, and that the Order was available to the Consumer Advocate during the proceedings captioned above held on August 13, 2003. While Sprint had been permitted to withdraw as a party from the "inflation-based index" docket, it was nonetheless present and participating in the "abuse of market position" docket (Docket No. 2002-367-C). The Consumer Advocate not only could have but also should have orally petitioned or otherwise moved for reconsideration before or during the "inflation-based index" docket proceeding. As a consequence, the Consumer Advocate could have then proffered a record to demonstrate any harm which might have occurred from permitting Order No. 2003-466 to stand, and Sprint would have thereby been given an opportunity to respond. By failing to raise this issue and proffering evidentiary or other support for its contentions set out in its Petition for Reconsideration and/or Clarification of Order No. 2003-466 at the proceedings August 13, 2003, the Consumer Advocate has failed to have made an adequate showing in support of his Petition and the Petition for Reconsideration and/or Clarification of Order No. 2003-466 therefore should be denied.

The Commission was correct in its Order No. 2003-466 granting Sprint's Petition for Declaratory and Motion to Withdraw from the "inflation-based index docket". The Order has been narrowly and properly crafted to the circumstances of Sprint's price regulation plan before the Commission. Granting the Consumer Advocate's relief requested would amount to no more

than an advisory opinion concerning hypothetical facts which are not now before this Commission. Accordingly, Sprint respectfully requests that the Commission deny the Consumer Advocate's Petition for Reconsideration and/or Clarification of Order No. 2003-466.

Respectfully submitted,



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September 5, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Return to Petition for Reconsideration and/or Clarification in connection with the Generic Proceeding to Define the Term "Inflation-Based Index," Docket No. 2002-408-C upon all parties of record by depositing copies addressed to each as follows in the United States Mail, first-class postage prepaid.

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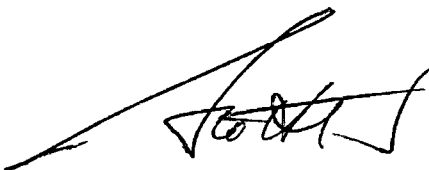
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